

PETITION FOR SPECIAL HEARING 85-262-SPH
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the relocation of an existing nonconforming use (storage of home repair materials) which was established by circuit court case #88170 from

9034 Simms Ct. to 9032A Simms Ct.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: Legal Owner(s):
(Type or Print Name) John C. Diegert, Jr.
Signature Anna Mae Diegert
Address 9034 Simms Ct. Baltimore, MD 21234
City and State
Attorney for Petitioner: 9034 Simms Ct. Baltimore, MD 21234
(Type or Print Name) Address Phone No.
Signature City and State
Address Name, address and phone number of legal owner, contract purchaser or representative to be contacted:
City and State Name
Attorney's Telephone No.: Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 19th day of February, 1985, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 25th day of March, 1985, at 11:00 o'clock.

Bel John
Zoning Commissioner of Baltimore County.

(over)

BALTIMORE COUNTY
ZONING PLANS
ADVISORY COMMITTEE



PETITION AND SITE PLAN
EVALUATION COMMENTS

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
TO: Zoning Commissioner Date: March 20, 1985
Norman E. Gerber, Director
FROM: Office of Planning and Zoning
SUBJECT: Zoning Petition No. 85-262-SPH

In view of the subject of this position, this office offers no comment.

Norman E. Gerber, Director
Office of Planning and Zoning

NEG:JGH:sm

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

March 14, 1985

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Mr. & Mrs. John C. Diegert, Jr.
9034 Simms Court
Baltimore, Maryland 21234

RE: Item No. 205 - Case No. 85-262-SPH
Petitioner - John C. Diegert, Jr., et ux
Special Hearing Petition

Dear Mr. & Mrs. Diegert:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bse

Enclosures

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
454-2500
NORMAN E. GERBER
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Zoning Advisory Meeting of 1/24/85
Item # 205
Property Owner: John C. Diegert, Jr., et ux
Location: 9034 Simms Court
NW of Simms Ave.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

- (X) There are no site planning factors requiring comment.
- () A County Review Group Meeting is required.
- () A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
- () This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
- () A record plat will be required and must be recorded prior to issuance of a building permit.
- () The access is not satisfactory.
- () The circulation on this site is not satisfactory.
- () The parking arrangement is not satisfactory.
- () Parking calculations must be shown on the plan.
- () This property contains soils which are defined as wetlands, and development on these soils is prohibited.
- () Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-58 of the Development Regulations.
- () Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
- () The amended Development Plan was approved by the Planning Board.
- () Landscaping: Must comply with Baltimore County Landscape Manual. The property is located in a deficient service area as defined by 811.178-75. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is.
- () The property is located in a traffic area controlled by a "D" level intersection as defined by 811.178-75, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
- () Additional comments:

cc: James Hoswell

Eugene A. Roher
Chief, Current Planning and Development

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204 2586
454-2500

PAUL H. REINCKE
CHIEF

February 8, 1985

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: John C. Diegert, Jr., et ux
Location: NW/S Simms Ct. 450' N. from c/l Simms Avenue
Item No.: 205 Zoning Agenda: Meeting of 1/29/85

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- (X) 1. Fire hydrants for the referenced property are required and shall be located at intervals of 150 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at

EXCEEDS the maximum allowed by the Fire Department.

- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

- () 6. Site plans are approved, as drawn.

- () 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWED BY: [Signature] Approved: Roy W. Hammer
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
454-2510

February 19, 1985

TED LAESKILA
DIRECTOR

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 205 Zoning Advisory Committee Meeting are as follows:

Property Owner: John C. Diegert, Jr., et ux
Location: NW/S Simms Court 450' N. from c/l Simms Avenue
Existing Zoning: D.R. 5.5
Proposed Zoning: Special hearing to approve the relocation of an existing non-conforming use (storage of home repair materials) which was established by C.C. Case No. 78170.

Address: 10.66/12.92 x 195/195
District: 11th.

The items checked below are applicable:

- (X) All structures shall conform to the Baltimore County Building Code 1981/Council Bill 1-82 State of Maryland Code for the Handicapped and Age), and other applicable Codes.
- () A building/ & other miscellaneous permit shall be required before beginning construction.

C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is not required. Non-reproduced seals and signatures are required on Plans and Technical Data.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. In exterior wall erected within 6'0" for Commercial uses or 3'0" for One & Two Family use group, an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'0" of lot lines. A fire wall is required if construction is on the lot line, see Table 1401, Line 2, Section 1401 and Table 1402, also Section 503.2.

F. Requested variance appears to conflict with the Baltimore County Building Code, Section/s

G. Change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal - Change use from R-3 to mixed uses - "R-3" and "B".

H. Before this office can comment on the above structure, please have the owner, through the services of a Registered Architect or Engineer certify to this office, that the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 205 and the required construction classification of Table 1401.

I. Comments - Storage areas over 50 square feet in a "B" use shall be sprinklered. See Section 1702.12. See also Section 103.2 and 1405.6.3 for compliance.

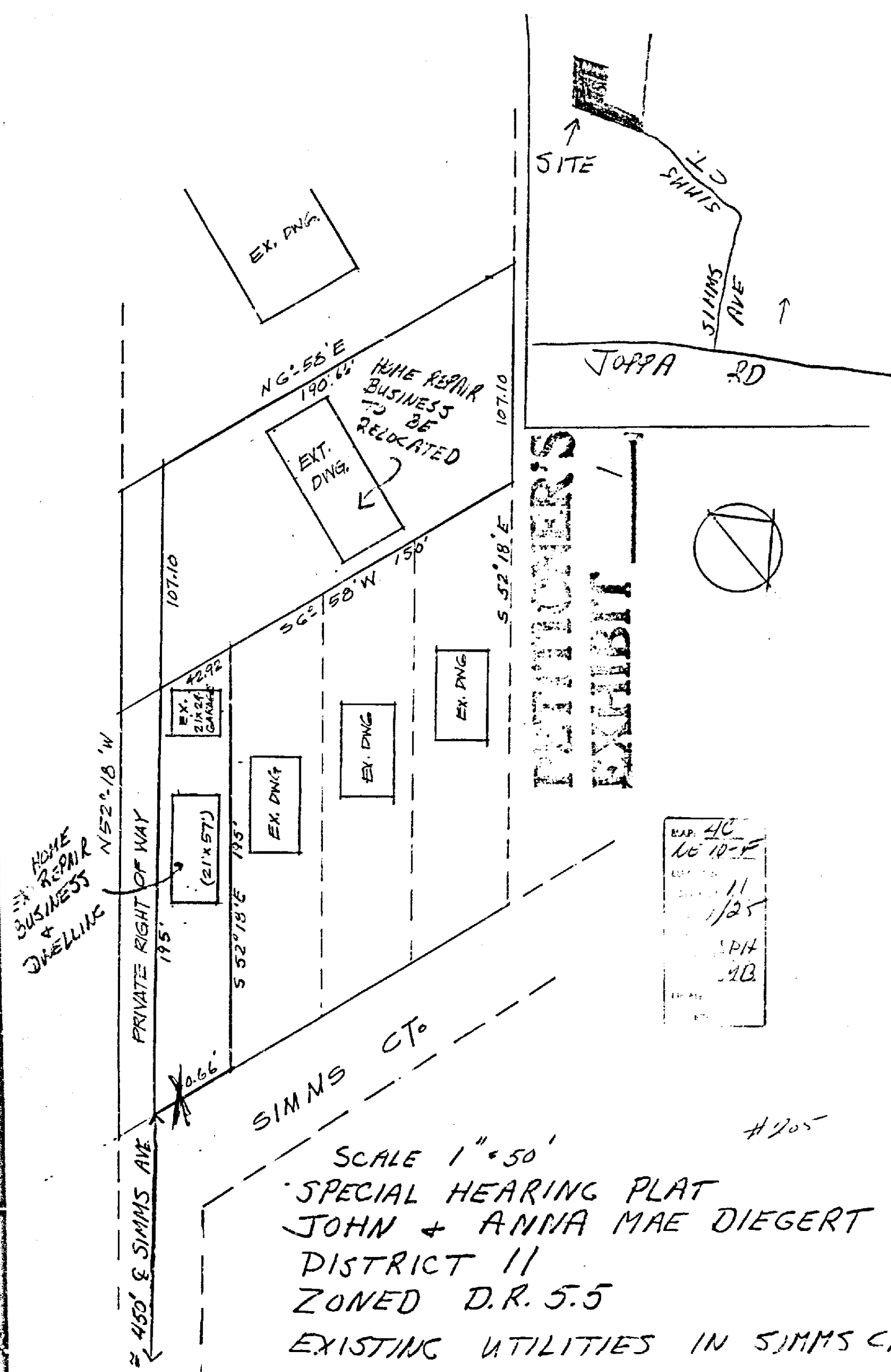
NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information may be obtained by visiting Room 122 (Plans Review) at 111 W. Chesapeake Ave., Towson.

Very truly yours,

Charles B. Burnham, Chief
Plans Review

AUG 8 1961

Beginning on the northwest side of Simms Court 450 feet north of the center Simms Ave. and thence running N 52° 18' W 502.10', N 6° 58' E 190.66', S 52° 18' E 107.10', S 6° 58' W 150', S 52° 18' E 195' and thence southerly along Simms Court 40.66' to the place of beginning. Also known as 9034 & 9032A Simms Ct.



IN RE: PETITION SPECIAL HEARING
NW/4 of Simms Court, 450' N
of the centerline of Simms
Avenue (9034 and 9032A Simms
Court) - 11th Election
District
John C. Diegert, Jr., et ux,
Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request permission to transfer a legal nonconforming use from the basement of their present home, 9034 Simms Court, to another home, 9032A Simms Court, presently under construction, see Petitioners' Exhibit 1.

The Petitioners appeared and testified. Protestants appeared and testified and were represented by Counsel.

The issue presented is a narrow one of consideration. Can the Petitioners transfer their nonconforming use from one location to another?

As a result of numerous complaints filed against the Petitioners' use of 9034 Simms Court, zoned D.R.3.5, charges of zoning violations were levied against them. After extensive quasi-judicial proceedings and an appeal to the Circuit Court for Baltimore County, it was determined by Judge John E. Raine in Case No. 88170 that the Petitioners enjoyed a nonconforming use limited to the storage of home repair building materials in the basement of their home. It is this use that the Petitioners wish to move to a home presently under construction on an adjoining lot.

A nonconforming use is an exception to generally applicable zoning requirements for a previously lawful, existing use. See, generally, 1 Anderson, American Law of Zoning, 2nd Edition, Section 6.01 to 6.73; 3 Rathkopf, The Law of Zoning and Planning, Section 58-1 to 62-18. The government recognizes a nonconforming use in derogation of the general zoning scheme in order to protect

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 85-262-SPH

ORDER RECEIVED FOR FILING
DATE March 25, 1985
BY [Signature]

PETITION FOR SPECIAL HEARING

11th Election District

LOCATION: Northwest side Simms Court, 450 ft. North from centerline of Simms Avenue (9034-9032A Simms Court)

DATE AND TIME: Monday, March 25, 1985 at 11:00 A.M.

PUBLIC HEARING: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the relocation of an existing nonconforming use (storage of home repair materials) which was established by Circuit Court Case No. 88170 from 9034 Simms Court to 9032A Simms Court

Being the property of John C. Diegert, Jr., et ux as shown on the plat filed with the Zoning Office.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

the interests of property owners. 1 Anderson, supra, Section 6.02 to 6.07; 3 Rathkopf, supra, Sections 58-1 to 58-3, 61-1. Nevertheless, the ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due respect to the legitimate interests of all concerned. A permissible aim of the zoning regulations is to limit and forbid expansion of a nonconforming use and to forfeit the right to it upon abandonment of the use or the destruction of the improvements housing the use. Grant v. Mayor and City Council of Balto., 129 A.2d 363 (1957). Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable ordinances and regulations. Feldstein v. LaNale Zoning Board, 237 A.2d 731 (1967). These regulations and ordinances must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. Mayor of Balto. v. Byrd, 62 A.2d 588 (1948).

In deciding whether a current activity is within the scope of a nonconforming use, the following factors should be considered:

1. to what extent the current use of the property reflects the nature and purpose of the original nonconforming use;
2. is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;
3. does the current use have a substantially different effect upon the neighborhood; and
4. is the current use a drastic enlargement or extension of the original nonconforming use.

McKe v. Balto. County, 39 Md. App. 257 (1948).
In general, a nonconforming use may not be extended to encompass new land or property which was not in use at the time of the enactment of the new or amended zoning ordinance. Chizum v. Elkhart County Planning Commission, 263 NE.2d 654 (Ind., 1970). Whether or not a nonconforming use can be enlarged or

ORDER RECEIVED FOR FILING
DATE March 25, 1985
BY [Signature]

extended is ordinarily governed by local ordinance, and Section 104.1 of the Baltimore County Zoning Regulations (BCZR) permits no expansion of a nonconforming building, structure, or use of a building, structure, or parcel of land more than 25% of the ground floor area of a building so used. Indeed, the law applicable to nonconforming uses relates that the basic premise underlining zoning regulations is to restrict rather than to expand. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417 (1977).

Although the lot on which the Petitioners are proposing the transfer was at one time a part of the same tract as the Petitioners current home, it was not a part of the Petitioners' property at the time Judge Raine made his decision and, certainly, that decision reflects the narrow scope within which a nonconforming use was found to exist. In no way can the Petitioners now transfer that use to another distinct location. To do so would be entirely inconsistent with the concept of a nonconforming use.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 21st day of March, 1985, that the transfer of a legal nonconforming use from the basement of 9034 Simms Court to 9032A Simms Court is not permitted and, as such, the Petition for Special Hearing is hereby DENIED.

[Signature]
Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING
DATE March 25, 1985
BY [Signature]

AJ/S
cc: [Signature] - Mrs. John C. Diegert, Jr.
[Signature] - John G. Disney, Esquire
[Signature] - Robert J. Ryan, Esquire
[Signature] - Ormsby Moore
[Signature] - People's Counsel